IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3312 OF 2006

Shri Ananda Dattatraya Desai since deceased through L.R.'s & Ors. ..Petitioners.

V/s.

Shri Anandrao Ramrao Jadhav & Ors. ..Respondents.

Mr.P.D. Dalvi for petitioners.

Mr.N.V.Bandiwadekar for respondent Nos.1 & 2.

Mr.A.H.Palekar, A.G.P. for respondent Nos.3 & 4.

CORAM : R.M.SAVANT, J.

DATED : 6TH JUNE, 2007.

P.C. :-

Rule. By consent of parties made returnable forthwith and heard.

2. This petition filed under Article 227 of the Constitution of India impugns the order dated 7/3/2006 passed by the Division Commissioner, Pune Division in restoration application No.11D/1999. By the said order, the restoration application filed by the petitioner before the said authority has been rejected.

3. The factual matrix involved is that the petitioner was the original tenant in Gut No.146/1 of

Village Vengarul, Tal. Bhudargad. The said land was original owned by Smt.Laxmibai Arjunrao Parab and Subhadrabai Arjunrao Parab. It appears that the landlord had made an application under the provisions of section 29(2) read with section 43.A(3) of Bombay Tenancy and Agricultural Land Act,1948 for restoration of land for personal cultivation. The said proceedings went back and forth between the Tahsildar and the Appellate Authority i.e. Sub Divisional Officer and pursuant to the last remand dated 31/8/1990 the matter was again remanded back to Tahsildar, Bhudargad. The Tahsildar by his order dated 14/5/1992 allowed the said application for restoration. Against the said decision, the tenant filed an appeal No.19/92 under section 74 of the said Act before the S.D.O., Radhanagari. The said appeal came to be dismissed by the S.D.O. by his order dated 17/11/1992. Aggrieved by the said order, the tenant filed a Revision under section 76 of the said Act on 2/2/1993. By the said time, the opponent No.2 one Ganpati Dattaray Desai died and in spite of his death, in the Revision Application filed by the tenant, the said Ganpati Dattatray Desai was arrayed as a opponent.

4. It appears that the petitioner had filed a pursis bringing to the notice of the Revisional

Authority about the death of Ganpati Dattatray Desai. As no steps were taken for bringing the L.R.'s of said Ganpati Dattatray Desai on record, the Revisional Authority by its order dated 1/10/1999 dismissed the Revision against the said Ganapati Dattatray Desai. Thereafter, by an order of the same date, the Revision itself came to be dismissed as none appeared for the Revision Applicant.

5. Petitioners herein filed an application for restoration of the said revision application on 29/10/1999. The said application came to be rejected by the Revisional Authority on the ground that the petitioners were negligent and callous in prosecuting the said Revisional remedy inasmuch as, petitioner had not even bothered to bring the L.R.'s of the opponent No.2 as also L.R.'s of the opponent No.4 on record. The said orders are the subject of the above petition.

6. I have heard learned counsel for the parties. Mr.Dalvi, learned counsel appearing on behalf of the petitioners has brought to my notice events that have taken place prior to the filing of the revision. It is undisputed fact that these proceedings have had a chequered history since 1976. As mentioned earlier in this order, the restoration application of the landlord

was remanded on two occasions to the Tahsildar by the Appellate Authority and on the third occasion, pursuant to the third remand, Tahsildar had passed an order for restoration which is the subject matter of the Revisional proceedings.

7. Mr.Dalvi contends that the grounds for rejection the petitioner's application cannot be a ground which is germane to an application for restoration. He further contended that the petitioners were not aware that the L.R.'s were to be brought on record. Mr.Dalvi, therefore, contended that for the omission of the advocate, the petitioners should not be made to suffer. On the other hand, it is contended by Shri Bandiwadekar, learned counsel appearing for the respondent No.1 & 2 that the conduct of the petitioner disentitles them for any relief from this Court under Article 227 of the Constitution of India. Mr. Bandiwadekar submits that though petitioner themselves have filed a pursis bringing to the notice of the Revisional Authority that the said Ganpati Dattatray Desai has expired, the petitioners filed the said Revision and arrayed the said Ganpati Dattatray Desai as a party to the said revision. Shri Bandiwadekar, therefore, contends that the restoration application is merely filed to stall and prolong the proceedings.

8. I have given my anxious consideration to the rival contentions of the parties. No doubt, as pointed out by Mr.Bandiwadikar, the petitioners have not bothered to bring the heirs of the said Ganpati Dattatray Desai on record though they brought to the notice of the Revisional Authority about his death. What is to be seen is that the issue raised in the Revisional Application has had a chequered history and in my view, the petitioners cannot be non suited for a technical flaw. It is also pertinent to note that other heirs of the original landlord Dattatray Desai are already on record and, therefore, it is not as if the landlord is unrepresented. The flaw in filing the Revision Application cannot be attributed to the petitioners as the petitioners would only go as per the advice of their legal counsel. In any event, in my view, that cannot be a ground for rejection of the restoration application of the petitioners. If the conduct of the petitioners has resulted in inconvenience to the contesting respondents, in my view, interest of justice would be served if the petitioners are directed to pay costs of Rs.10,000/- to the contesting respondent Nos.1 & 2. The said costs to be paid within 3 weeks from today.

9. In the result, the petition is allowed. The impugned order dated 7/3/2006 is set aside. The Revision Application is restored to file. The Revisional Authority to hear and decide the Revision expeditiously.

10. In the event the petitioners fail to pay the costs as directed above, the petition would stand dismissed.

11. Rule is accordingly made absolute in above terms with no order as to costs.

(R.M.SAVANT, J.)